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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE LUIS PARTIDA,

Defendant and Appellant.

C083688

(Super. Ct. No. 15F03085)

A jury found defendant guilty of attempted murder and aggravated mayhem. Sentenced to eight years to life in state prison, defendant appeals his conviction. On appeal, defendant contends there was insufficient evidence to find him guilty of aggravated mayhem. He also contends the trial court imposed an unlawful sentence for his conviction. We conclude there was sufficient evidence to convict defendant of aggravated mayhem. We also agree with the parties that the trial court erred in pronouncing sentence when it described the indeterminate life sentence for aggravated mayhem as being “7 years to life.”

We affirm the judgment and will direct the trial court to correct the abstract of judgment.

I. BACKGROUND

In December 2014, M.M. and A.P. were coworkers who began dating. A.P. was approximately 33 years old and M.M. was approximately 55. Defendant, A.P.'s father, did not approve of her relationship with M.M.; he did not like M.M. and thought M.M. was too old for her. Defendant told M.M. not to see A.P. anymore. A.P. and M.M. ignored defendant's request and continued to date, angering defendant.

On May 20, 2015, around 10:00 p.m., M.M. left his house on foot to meet A.P. after work. M.M. owned two guns, but he generally kept them in a storage unit and he did not bring them with him that night. As M.M. reached the entrance to a park near his house, defendant "came out of the bushes" and approached him. Defendant said he wanted to talk about A.P. and insisted they go into the park, rather than stay on the sidewalk. Defendant grabbed M.M. by the shirt and lead him into the park. M.M. knew defendant did not want him dating A.P.; he was worried.

It was dark inside the park, which was closed. Defendant directed M.M. to walk up a hill; he continued to hold onto M.M.'s shirt and they continued to talk about A.P. The two came to a stop near a tree. M.M. took out his phone to get defendant's phone number so they could talk further, but defendant grabbed the phone and took it away from him. Defendant then told M.M. to get down on his knees. M.M. complied.

Now on his knees, M.M. felt something like a gun being pressed against the back of his head. M.M. prayed silently and told defendant about his family back in Boston, pleading for his life. M.M. promised to leave A.P. and return to Boston. Defendant did not respond. Defendant then slashed M.M.'s throat with a knife. M.M. grabbed his throat and fell to the ground trying to play dead. Defendant continued to attack.

Defendant shoved M.M., who looked to his right side and saw defendant raise his arm to stab him again. Defendant stabbed him again, this time in the right armpit and

chest area. M.M., still holding his throat, was able to run from defendant and out of the park, calling for help. Defendant chased him. M.M. was able to reach a house with an open door; he asked them for help. The occupants gave him a towel and called 911.

M.M. was taken to the hospital. In addition to cutting M.M.'s throat, defendant cut M.M.'s face from the left corner of his mouth to his ear. M.M. did not remember his face being cut. Both injuries left visible scars on the left side of M.M.'s face and on his neck.

The People subsequently charged defendant with attempted murder (Pen. Code, §§ 664/187, subd. (a))¹ and aggravated mayhem (§ 205). The People further alleged the attempted murder was premeditated (§ 664, subd. (a)), defendant personally used a firearm during the commission of his crimes (§ 12022.53, subd. (b)), and defendant used a deadly weapon during the commission of his crimes (§ 12022, subd. (b)(1)). Defendant pleaded not guilty and denied the sentencing enhancement allegations.

Jury trial began on April 18, 2016. At trial, defendant's wife testified that defendant was not a violent man. She and defendant knew about their daughter and M.M. and were scared for their daughter both because of the age difference and because they knew M.M. had guns. On May 20, 2015, defendant left for work as usual; she did not know he was planning to see M.M. after work.

Defendant testified that on the night of the attack, he went to speak with M.M. because he was afraid for his daughter. He drove to the park because he knew, generally, where M.M. lived. He took a gun and a knife with him, but the gun was not loaded; the knife was a steak knife from his kitchen. He thought he may have to defend himself from M.M.

¹ Undesignated statutory references are to the Penal Code.

According to defendant, he told M.M. he was afraid for his daughter. M.M. said A.P. was fine and he did not want to talk to defendant. Defendant said it was M.M. that became loud and angry, and defendant suggested they walk and talk so M.M. could calm down. As they walked into the park, defendant said the conversation became more heated. M.M. said A.P. was an adult, could make her own decision, and that they may get married. This made defendant angrier.

Defendant saw M.M. reach toward his waistband; he thought M.M. was reaching for a gun and feared M.M. was going to kill him. He told M.M. “don’t do it,” but M.M. moved toward defendant. Defendant grabbed his knife from his back pocket and started to swing it back and forth; he did not remember how many times. M.M. continued to approach, kicking at defendant, and defendant fell to the ground. Defendant tried to get up, lashing out with the steak knife. He soon realized he had cut M.M. Defendant testified that he never took out his gun.

Defendant testified that M.M. ran off and defendant got up and went in the opposite direction. Defendant was scared and thought M.M. might come behind him and try to shoot him. He dropped the knife as he ran away. The police arrested defendant a short time later.

The jury found defendant guilty of attempted murder and aggravated mayhem. They found true the allegation, while committing aggravated mayhem, defendant used a deadly weapon. The trial court sentenced defendant to seven years to life for aggravated mayhem, plus another year for the use of a deadly weapon. The court imposed and stayed the term for attempted murder.

II. DISCUSSION

A. *Aggravated Mayhem*

Defendant argues his conviction for aggravated mayhem must be reversed because there was insufficient evidence he intended to maim M.M. The argument has no merit.

“On appeal, the test of legal sufficiency is whether there is substantial evidence, i.e., evidence from which a reasonable trier of fact could conclude that the prosecution sustained its burden of proof beyond a reasonable doubt. [Citations.] Evidence meeting this standard satisfies constitutional due process and reliability concerns. [Citations.] [¶] While the appellate court must determine that the supporting evidence is reasonable, inherently credible, and of solid value, the court must review the evidence in the light most favorable to the prosecution, and must presume every fact the jury could reasonably have deduced from the evidence.” (*People v. Boyer* (2006) 38 Cal.4th 412, 479-480.)

Aggravated mayhem requires the specific intent to maim, i.e., to cause a permanent disability or disfigurement. (*People v. Assad* (2010) 189 Cal.App.4th 187, 195.) A defendant’s specific intent to maim may not be evidenced solely by the fact that the injury inflicted constitutes mayhem. Facts and circumstances other than the fact of the maiming must support an inference of intent to maim, rather than an indiscriminate attack. (*People v. Ferrell* (1990) 218 Cal.App.3d 828, 835.) Such facts and circumstances include the circumstances attending the act, the manner in which it is done, and the means used. (*People v. Szadziwicz* (2008) 161 Cal.App.4th 823, 831.)

Here, viewed in a light most favorable to the judgment, there were multiple facts and circumstances from which the jury could reasonably infer defendant’s intent to maim M.M. Defendant wanted M.M. to stay away from A.P.; M.M. and A.P. were ignoring defendant’s demands, which made defendant angry. So, defendant went to the park near his house, armed with a gun and a knife. He lay in wait and grabbed M.M. by the shirt and dragged him off the sidewalk and into the park where there was no light.

In the park, defendant held a gun to M.M.’s head and ignored his pleas for mercy. Defendant then slashed M.M.’s throat with the knife he brought from his kitchen. This was sufficient evidence from which a reasonable jury could find defendant acted with the requisite intent to maim M.M. (See *People v. Park* (2003) 112 Cal.App.4th 61, 69-70

[planned attack based on history of antagonism is evidence the attack was not indiscriminate].)

B. Sentencing Error

Defendant contends, and the People agree, the trial court erred in announcing defendant's sentence. The sentence for aggravated mayhem is life with the possibility of parole. (§ 205.) When sentencing defendant on his conviction for aggravated mayhem, however, the court said, "he'll be sentenced to a term of life in prison with a minimum incarceration of seven years and will be followed by a one-year consecutive term under [section] 12022(b)(1)[,] that is the arming enhancement. So total aggregate time, seven years to life, plus one." The abstract of judgment reflects that same term "7 years to [l]ife on count[] 2." This is an error.

We recognize that a term of life with the possibility of parole requires a defendant to serve at least seven years in state prison (and presumably that is what the trial court was thinking when it announced defendant's sentence). (§ 3046, subd. (a)(1).) Defendant was not, however, sentenced to a term of seven years to life, he was sentenced to life in prison with the possibility of parole, plus an additional year for the arming enhancement. We will direct the trial court to correct the abstract of judgment accordingly.

III. DISPOSITION

The judgment is affirmed. The trial court is directed to correct the abstract of judgment consistent with this opinion and forward a copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation.

/S/

RENNER, J.

We concur:

/S/

BLEASE, Acting P. J.

/S/

HOCH, J.